



EPA Proposes to Approve the Assiniboine and Sioux (Fort Peck) Tribes' Class II Underground Injection Control Program In Montana

Why is this rule needed?

Under Section 1451(a)(2) of the Safe Drinking Water Act (SDWA) and 40 Code of Federal Regulations (CFR) Section 145.58(b), the U.S. Environmental Protection Agency (EPA) may approve Underground Injection Control (UIC) programs for Indian tribes. In late 1995, the Assiniboine and Sioux (Fort Peck) Tribes in Montana applied to the EPA for primary enforcement authority or "primacy" under the SDWA to regulate all Class II injection wells within the exterior boundaries of its Reservation. Class II injection well activities involve the injection of fluids produced during oil or gas production, injection of fluids for the storage of hydrocarbons, and injection of fluids for enhanced recovery of oil and natural gas. In response to EPA's review of the Tribes' initial application as well as the few public comments the Agency received, the Tribes submitted a revised primacy application in June, 1999, which included formal adoption of its own Class II rules. EPA is now prepared to make a decision to either approve or disapprove the Tribes' proposed Class II injection well program which must be done through formal rulemaking.

What is EPA's proposal?

After an extensive legal and technical review of the Tribes' primacy application, EPA is proposing to approve the Tribes' Class II injection well program under Section 1425 of the SDWA. Section 1425 establishes an alternative method by which a State or Tribe may obtain primacy for a UIC program to regulate Class II injection wells. A State or Tribe may demonstrate that its program meets the more general statutory requirements of Section 1421(b)(1)(A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water, in lieu of EPA's regulatory requirements. If approved as proposed, the Tribes would administer and enforce their own program for the existing 23 Class II injection wells and any future wells located within the exterior boundaries of the Reservation. EPA is requesting public comments on this proposal.

Do the Tribes have the capability to manage the program?

Yes. As part of the administrative record available for public review and comment, the Agency's proposed Decision Document includes specific findings as to the Tribes' capability to administer its own Class II injection well program. Specifically, the Tribes have demonstrated managerial capability through: 1) entering into contracts with the Bureau of Indian Affairs including administration of oil and gas lease operations on the Reservation; 2) administering a number of existing environmental and public health programs including water quality standards and management programs under Clean Water Act (CWA) Sections 303 and 106 respectively, nonpoint source protection under CWA Section 319, and programs under Section 105 of the Clean Air Act; 3) providing technical assistance and comments on issues related to EPA's implementation of the Class II injection well program on the Reservation; 4) conducting inspections of regulated facilities for compliance with Federal Insecticide, Fungicide, and Rodenticide Act regulations on behalf of EPA; 5) the creation of a 15-member Executive Board which oversees various committees performing administrative functions, established ordinances contained in a comprehensive Code of Justice, and established a court system; 6) the creation of an Office of Environmental Protection to administer the Class II injection well program staffed by technically and administratively qualified personnel; and 7) establishment of a Direct Implementation Tribal Cooperative Agreement authorizing the Tribes to assist EPA in directly implementing the UIC Class II program, including use of federal EPA inspector credentials to enforce UIC Class II program regulations.

How can I comment on this proposed rule?

EPA will accept written comments during the 30-day public notice period which ends on February 29, 2008. All written comments, identified by Docket ID No. EPA-OW-2007-0153, may be submitted by one of the methods listed in the Federal Register notice of this proposal, which is posted on line at: <http://www.epa.gov/region8/water/uic/index.html>. EPA will also accept written and oral comments at a public hearing. This hearing will be held on February 25, 2008. The hearing will be held at the Fort Peck Community College Auditorium located at 605 Indian Avenue, Highway 2, Poplar, Montana, at 7 pm.

How can I get more information?

Please contact Mr. Douglas Minter at minter.douglas@epa.gov or (800) 227-8917, extension 312-6079 or (303) 312-6079, with any questions on submitting comments or for additional information.